FILE COPY

Office-Supreme Court, U.S.
FILED
FEB 20 1965
JOHN F. DAVIS, CLERK

No. 783

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

GLORIA STOLLAR,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

CHARLES A. BELLOWS
10 South La Salle Street
Chicago, Illinois 60603
Attorney for Petitioner

THEODORE R. PICKARD
JAY W. BELLOWS
100 North La Salle Street
Chicago, Illinois 60602

JASON ERNEST BELLOWS
SHERMAN C. MAGIDSON
10 South La Salle Street
Chicago, Illinois 60603
On the Brief

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA review 5-6581

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 783

GLORIA STOLLAR,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois,

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION

The respondent does not contest whether the case presents a question of sufficient importance to warrant this Court's exercise of its discretionary jurisdiction. One may almost say, without being presumptuous, that that matter was concluded by the grant of certiorari in *Harris* v. *United States*, No. 526, October Term, 1964, on December 14, 1964, ten days before the petition in this case was filed.

The thrust of respondent's brief in opposition is that the Federal Question was not raised in the court below,

and, therefore, this Court cannot decide a question which was not raised below. As a general statement of law the respondent's position is correct. There have almost always been, however, significant exceptions to that rule. *Saunders* v. *Shaw,* 244 U.S. 317. The most common exception has been where the decision of the highest state court has supplied a new and unexpected basis for a claim by the defeated party of the denial of a federal right. *Great Northern Ry. Co.* v. *Sunburst Oil & Refining Co.,* 287 U.S. 358, 53 S. Ct. 145, 77 L. Ed. 360. We believe that to have been the case here. By its refusal to apply the statutory limit of punishment for misdemeanors to contempt cases, the Illinois Supreme Court created the question of whether there must constitutionally be a limit to summary contempt punishment.

More "surprising" than the decision of the Supreme Court of Illinois, perhaps, was the opinion of this Court in *United States* v. *Barnett,* 376 U.S. 681, 84 S. Ct. 984, 12 L. Ed. 2d 23, for, in that case was first articulated the question which we present to the Court. The decision of this Court in *Barnett* was announced on April 6, 1964, a point in time after the present case was briefed and argued in the Supreme Court of Illinois. After its opinion was rendered, the Supreme Court of Illinois refused to reconsider.

Perhaps, as some theoreticians suggest, the question presented in this case was always *in posse* if not actually *in esse* and, therefore, petitioner should have raised it in the trial court at the latest. We submit, however, that this Court or some members of the Court were of the opinion that it was then necessary to enunciate the question of the constitutional length of summary contempt punishment to place bench and bar on notice of it. We further submit that if the question did not at that time emerge Athena-

like full blown, at least it then first emerged in a fully articulated state as a question to be considered by this Court.

The petitioner here should not be penalized because she could not foretell the emergence of a question which members of this Court caused to be specifically stated in a dictum in the *Barnett* opinion because they apparently believed that it would not have emerged without such statement.

In any event we believe that a well settled rule of appellate jurisdiction to decide a question is applicable here. That rule is that the question of jurisdiction of the court below to enter the judgment in question or the jurisdictional validity of the judgment may be raised at any time in the proceedings and may be raised for the first time on appeal. Cf. *Glidden* v. *Zdanok*, 370 U.S. 530, 82 S. Ct. 1459, 8 L.Ed. 2d 671, *American Construction Co.* v. *Jacksonville, T. & K. W. R. Co.*, 148 U.S. 372, 13 S. Ct. 758, 37 L. Ed. 486. The sentence in this case is attacked as being constitutionally void and if so the trial court below was constitutionally without jurisdiction to enter such a judgment. On such basis this Court has jurisdiction to determine a question of jurisdiction raised for the first time in the petition for a writ of certiorari.

Respectfully submitted,

CHARLES A. BELLOWS
Chicago, Illinois
Attorney for Petitioner.

THEODORE R. PICKARD
JAY W. BELLOWS
JASON ERNEST BELLOWS
SHERMAN C. MAGIDSON
On the Brief.